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PATENT ✓ #8

Case Docket No. NADII.018A  
Date: December 10, 2001

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Fumiaki Katagiri  
App. No. : 09/770,509  
Filed : January 25, 2001  
For : OOMYCETE FTSZ-MT AS  
A TARGET FOR  
OOMYCETE-SPECIFIC  
FUNGICIDES

I hereby certify that this correspondence and all  
marked attachments are being deposited with the  
United States Postal Service as first class mail in  
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for Patents, Washington, D.C. 20231, on

10 January 2002  
(Date)  
*[Signature]*  
Dale C. Hunt, Ph.D., Reg. No. 41,857

01/15/2002 SMHASS1 00000049 09770509

01 FC:103  
02 FC:105  
03 FC:1151908.00 OP  
130.00 OP  
110.00 OP

Group Art Unit : unknown

## TRANSMITTAL LETTER

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231  
ATTENTION: BOX MISSING PARTS

Adjustment date: 08/29/2002 Y61ZAW  
01/15/2002 SMHASS1 00000049 09770509  
01 FC:103 -1908.00 OP

Dear Sir:

In response to the Decision on Petition, which was mailed by the Office on September 10,  
2001, and pursuant to 37 CFR 1.53(f), enclosed are:

(X) An executed Declaration by Inventor.

08/29/2002 Y61ZAW 00000005 111410 09770509  
01 FC:101 740.00 OP  
02 FC:102 672.00 OP  
03 FC:103 62.00 CH 496.00 OP

(X) A Power of Attorney Form and Copy of Assignment.

(X) A Sequence Listing in 33 pages. This is identical to the Sequence Listing which was  
filed with the Application on January 25, 2001.(X) A Sequence Listing in computer readable form. This is identical to the Sequence Listing  
in computer readable form which was filed with the Application on January 25, 2001.

(X) A Sequence Submission Statement as required by 37 C.F.R. § 1.821(f).

(X) Please enter the Sequence Listing into the Specification. There is no new matter in the  
Sequence Listing.

08/28/2002 Y61ZAW 00000007 111410 09770509

01 FC:128 1850.00 CH



NADII.018A

DCH/dop

UNITED STATES PATENT AND TRADEMARK OFFICE



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United States Patent and Trademark Office  
Washington, D.C. 20231  
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Paper No. 5

KNOBBE MARTENS OLSON & BEAR LLP  
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SIXTEENTH FLOOR  
NEWPORT BEACH, CA 92660

DOCKETED ON: 9.19.01  
BY: lhw VERIFIED BY: CH  
ACTION: Missing Parts  
DUE DATE: Nov. 10, 2001 COPY MAILED  
FINAL DEADLINE: March 10, 2002 SEP 10 2001  
ATTY: NH/DOP  
ATTORNEY VERIFICATION OF DUE DATE  
AND FINAL DEADLINE: OFFICE OF PETITIONS

In re Application of :  
Fumi Katagiri : DECISION DISMISSING  
Application No. 09/770,509 : PETITION  
Filed: 25 January, 2001 :  
Attorney Docket No. NADII.018A :

This is a decision on the petition filed on 11 June, 2001, requesting that the above identified application be accorded a filing date of 25 January, 2001, with seven (7) sheets of drawings containing three (3) drawing figures.

The application was filed on 25 January, 2001. On 9 May, 2001, however, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings. Additionally, petitioner was informed that the statutory basic filing fee, additional claims fees, the oath or declaration, and a paper copy of the Sequence Listing were required. A two (2)-month period for reply was set.

The present petition argues that 7 sheets of drawings containing 3 figures were filed on 25 January, 2001. In support, the petition is accompanied by a copy of 7 sheets of drawings, a copy of a certificate of mailing by Express Mail and a copy of the application transmittal letter.

The argument is not persuasive. The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that no sheets of drawings were filed on 25 January, 2001, since no drawings are present in the file. An applicant alleging that a paper was filed in the

USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The only evidence relied on to support petitioner's allegation is the application transmittal letter and the certificate of mailing by Express Mail. The listing of papers on an application transmittal letter or in a certificate of mailing is not sufficient evidence that a paper so listed was actually filed in the USPTO.

The USPTO has a well established and well publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

Unfortunately, in this case, petitioner failed to list 7 sheets of drawings on the return postcard. Therefore, it is not evidence that 7 sheets were filed on 25 January, 2001.

It is noted that the present application contains process or method claims. It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). Since the application was filed with at least one claim directed to a process or method, the application should have been treated as an application for which a drawing is not necessary and Initial Patent Examination Division should have mailed a "Notice Of Omitted Item(s)." See MPEP § 601.01(f).

In view of the above, the Notice mailed 9 May, 2001, is hereby withdrawn. The application is accorded a filing date of 25 January, 2001, without drawings.

The petition is granted to the extent indicated above.

Receipt is acknowledged of the authorization to charge fees to a deposit account filed on June 11, 2001. The \$710.00 basic filing fee and \$1,198.00 for additional claim fees have been charged to the deposit account.

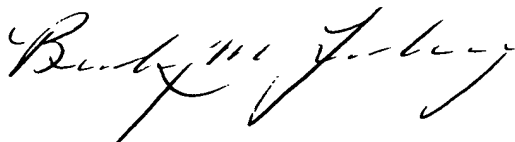
The application was filed on 25 January, 2001, without a signed oath/declaration in compliance with 37 CFR 1.63 or the paper or compact disc copy of the "Sequence Listing" required by 37 CFR 1.821(c).<sup>1</sup>

Applicant is given TWO MONTHS from the mailing date of this decision to file a signed oath/declaration in compliance with 37 CFR 1.63 and a paper or compact disc copy of the "Sequence Listing," as well as an amendment directing its entry into the specification and a statement that the submission includes no new matter. See 37 CFR 1.821(g). This time period may be extended pursuant to 37 CFR 1.136(a). Failure to comply with these requirements will result in the abandonment of the application.

Since the application was filed on 25 January, 2001, without the basic filing fee or a signed oath/declaration, the \$130.00 surcharge set forth in 37 CFR 1.16(e) is required and has been charged to deposit account No. 11-1410.

The application is being returned to the Office of Initial Patent Examination to await the response required above and for further processing with a filing date of 25 January, 2001, including an indication in USPTO records that "0" sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup> Only the copy of the "Sequence Listing" in computer readable form (37 CFR 1.821(e)) was filed on 25 January, 2001.